

### **REMARKS**

Claims 1, 10-12, 22, and 24 stand rejected under 35 U.S.C. §103(a) over Krotzer (US 2001/0008641) in view of Portman. These claims also stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

In response to the final Office Action of Paper No. 0608, claims 1, 10-14 and 22-24 are submitted for reconsideration on the basis of the above amendment provided to claim 1 as well as the following remarks.

### **Interview Summary**

Applicant thanks that Examiner for participating in a telephone interview with Applicant's counsel, Mr. Schneider and Dr. Goldstein, on July 29, 2008 at approximately 3:00 p.m. The focus of the interview was on a proposed amendment that had been submitted in advance of the meeting. The proposed amendment included the amendment to claim 1 set forth above, and proposed remarks (as set forth below) concerning the outstanding Section 112 rejection and the Section 103 rejection. The interview concluded with the Examiner indicating that the proposed amendment to claim 1 would overcome the art of record, and that the Examiner agreed with Applicant's remarks concerning use of the term "synergistically". The Examiner also suggested that claim 24 be amended so that it more clearly corresponds to the specification.

### **Remarks Directed to Rejection of Claims 1, 10-12, 22 and 24 under 35 U.S.C. §112, first paragraph**

It was suggested in the Office Action that the phrase "wherein said water-soluble extract of cinnamon functions synergistically with said second ingredient at a daily intake of..." as used in claim 1 introduced new matter. Applicant respectfully disagrees. Support for the cited language is found on pages 9 and 10 (as clarified by page 5) of the specification.

A problem identified on page 5 of the specification is how does one increase creatine uptake without having to resort to the use of exceptionally high insulin levels. It is, for example, noted that “insulin can enhance creatine accumulation in muscle, but only if insulin levels are present at *extremely high or supra-physiological concentrations*.” Thus, the specification continues, “... there exists a need in the art for a viable method of increasing the uptake of creatine into mammalian tissue, such as skeletal muscle. Further, there exists a need in the art for a dietary supplement whose administration *at normal physiological concentrations* would effect such an increase in creatine uptake.”

Pages 9 and 10 of the specification detail a response to the problem outlined on page 5. Specifically, the specification stated that the administration of a dietary supplement containing creatine and cinnamon extract, etc. “will mimic the effects of insulin and will decrease glucose intolerance, thereby increasing the efficiency of insulin. As a result, administration of the creatine-containing dietary supplements of the invention will enhance the transport of creatine into tissues such as skeletal muscle.” State differently, the extract of cinnamon functions synergistically with the creatine monohydrate, and/or a creatine magnesium chelate to increase the uptake of creatine by a muscle. This result, i.e., increased uptake, may not be accomplished simply by providing only one of either the extract of cinnamon or the creatine monohydrate/creatine magnesium chelate. Thus, while the specification does not literally use the term “synergistic”, the specification clearly does describe a synergistic action involving components (a) and (b) of the claimed supplement.

Regarding claim 24, this claim was based upon original claim 15. The claim has now been amended to recite that “element (b) is present in an amount of 104 mg per gram of the

dietary supplement". Support for this amount is found in Example 1 wherein it can be shown that  $200\text{mg}/96\text{g} = 2.08 \text{ mg/g}$  and  $10\text{g}/96\text{g} = 0.104\text{g} = 104\text{mg}$ . Accordingly, given 2 mg of element (a), the amount of element (b) has been clarified to read 104 mg.

**Remarks Directed to Rejection of Claims 1, 10-12, 22 and 24  
under 35 U.S.C. §103(a) over Krotzer in view of Portman**

Krotzer teaches the use of a ground or powdered cinnamon. It does not teach the use of a water-soluble cinnamon extract as disclosed and now claimed by Applicant. This is a critical distinction.

In the Office Action it was suggested that since ground bark is naturally water-soluble, the incorporation of cinnamon within a solution/beverage would intrinsically read upon a water-soluble extract. Applicant does not disagree that cinnamon bark may be water-soluble. However, the direct use of a ground cinnamon bark in a solution/beverage as contemplated by the Office Action would also inherently result in a significant amount of unwanted debris and impurities being included with that solution/beverage.

Cheng teaches that a cinnamon extract should be purified and "free of solid debris". See Cheng, Col. 4, lines 45 - 67. Thus, one of skill in the art would not have looked to obtain an extract in the manner contemplated by the Office Action since to do so would yield a solution/beverage filled with unwanted material. Material that may, given the nature of cinnamon bark, be toxic if consumed in sufficient quantities. Further, given the closed language of the claim as it relates to element (a), the presence of a significant amount of bark impurities would clearly take the resulting solution/beverage outside of the scope of the dietary supplement as claimed. See MPEP 2111.03("The transitional phrase 'consisting of' excludes any element, step, or ingredient not specified in the claim.").

Therefore, in view of the above amendments and remarks, Applicant submits that the application is now in proper form for allowance.

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Respectfully submitted,

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